

Application Serial No. 09/900,927

REMARKS

This Reply and Amendment is intended to be completely responsive to the final Office Action dated April 9, 2003, the Advisory Action dated May 20, 2003 and the Advisory Action dated June 23, 2003.

Status of Claims

The Applicants thank the Examiner for the Detailed Office Action dated April 9, 2003, the Advisory Action dated May 20, 2003 and the Advisory Action dated June 23, 2003. The Applicants acknowledge that the Reply and Amendment filed by the Applicants on April 23, 2003 and the Reply and Amendment filed by the Applicants on May 30, 2003 were not entered.

Claims 21-23, 26, 28-29, 31-32, 34-37, 39 and 67-102 are pending in this Application.

Claims 24, 25, 27, 30, 33, 38 and 40 have previously been cancelled (without prejudice). Claims 41-66 are withdrawn from consideration. The final Office Action indicates that Claims 21, 67 and 84-102 stand rejected and that Claims 22-23, 26, 28-29, 31-32, 34-37, 39 and 68-83 are objected to but indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.¹

Upon entry of this Reply and Amendment, independent Claims 21, 67, and 86 and dependent Claims 22-23, 26, 29, 31-32, 34-36, 67, 70-88, 90-92, 94-100 and 102 will be amended for clarity.

Interview Summary

The Applicants thank the Examiner and the Supervisory Examiner for the telephonic interview conducted on July 10, 2003. The Interview was attended by Supervisory

¹ The Applicants note that both Advisory Actions indicate that Claims 21, 26, 28, 31, 34, 35, 37 and 67-102 are indicated as rejected.

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Examiner Terrell Morris, Examiner Lynda Salvatore, and attorneys Walter Zimmerman and John Lazarus for the Applicants.

During the interview the Applicants acknowledged that the clarity of the terminology used in the claims presently under examination could be improved (while preserving the claim scope). The Applicants expressed a concern that they did not want others to be able to copy the inventive concept, while avoiding claim coverage. The Supervisory Examiner suggested that the Applicants add clarity by reciting the element of the batting and the adhesive as a "composite." The Supervisory Examiner also explained how better to recite certain attributes of the adhesive for further clarification, for example, an "adhesive material effective to form a bond."

Agreement was reached that proper recitation of attributes of the adhesive material and clarifying phraseology would resolve the pending rejections of the independent claims under 35 U.S.C. § 112 ¶ 2, and would also clarify the patentability of the recited subject matter.

The Applicants requested withdrawal of the finality of the final Office Action. However, the Supervisory Examiner stated that the finality of the final Office Action would not need to be withdrawn. The Applicants agreed to file an amendment to the claims incorporating certain attributes of the adhesive material and that would use the example phraseology suggested by the Supervisory Examiner, for clarity.

The Applicants reserved the right to pursue additional/alternative claim coverage in a continuation patent application.

Summary

The Applicants have amended independent Claims 21, 67 and 86 to recite the batting and the adhesive as a "composite member" and to recite a combination of certain attributes of the batting and certain attributes of the adhesive as suggested by the Examiner. The scope of independent Claims 21, 67 and 86 (as amended) is no broader

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than the scope of Claims 21, 67 and 86 (respectively) as examined and referenced in the final Office Action dated April 9, 2003.

The present amendments of Claims 21, 67 and 86 also specify "how" the adhesive is provided with the batting ("an adhesive material applied to the batting" [Claims 21 and 86] and a "batting and an adhesive material ... applied thereto" [Claim 67]) and "where" the adhesive is provided with the batting ("an adhesive connection at the opposing faces of the batting" [Claims 21 and 86] and "a bond at the opposing faces of the batting" [Claim 67]).

Claim Objections

In Section 5 of the Office Action, the Examiner objected to Claim 85 under 37 C.F.R. § 1.75(c) as being of improper form for failing to further limit the subject matter of a previous claim. The Examiner suggested "to delete the term 'essentially.'"

The Applicants have amended Claim 85 to delete the term "essentially," as suggested by the Examiner.

The Applicants believe that Claim 85 (as amended) has overcome the rejection under 37 C.F.R. § 1.75(c) and is in condition for allowance.

Claim Rejections - 35 U.S.C. § 112 ¶ 2

In Sections 6-11 of the Office Action, the Examiner rejected Claims 21, 67, 84, 86 and 102 under 35 U.S.C. § 112 ¶ 2 as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention.

Claims 21, 67 and 86

In Section 8, regarding independent Claims 21, 67 and 86, the Examiner stated that it is unclear "how the adhesive is provided with the batting ... [s]pecifically, is the adhesive applied over the surface of the batting or within the batting?" The Examiner suggested "that the Applicant specify where and how the adhesive is provided with the batting."

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Independent Claim 21 is in "Jepson" form. See 37 C.F.R. § 1.75(e). Claim 21 is directed to an improvement to a "batting of a type having opposing faces and a softness and a flexibility and configured for use in the formation of a quilt" comprising a "composite member formed of the batting and an adhesive material applied to the batting" (explaining how the adhesive is provided with the batting) so that a "cover can be attached to the batting by an adhesive connection at the opposing faces of the batting" (explaining where the adhesive material is provided with the batting). Claim 21 (as amended) recites attributes of the batting (the "batting consists of cotton or polyester or cotton-polyester") and now also recites as additional limitations attributes of the adhesive material ("the adhesive material comprises an activatable adhesive configured to at least temporarily secure the cover to the batting"), as had been recited in allowable Claims 22 and 23).

The Applicants do not intend to claim any particular manner of application of the adhesive material (i.e. Claim 21 is directed to a product and not to a method). However, the adhesive material applied to the batting must form a "composite member" so that an "adhesive connection" can be made to a cover. In other words, the "composite member" has the adhesive material applied in a manner that the adhesive material is present at the opposing faces (i.e. surfaces) of the batting.

The Applicants have rewritten Independent Claim 67 based on independent Claim 21 (as amended) to recite a "composite member formed of the batting and an adhesive material for bonding fabrics applied thereto" (explaining how the adhesive material is provided with the batting) where the "adhesive material facilitates a bond at the opposing faces of the batting" (explaining where the adhesive material is provided with the batting). Claim 67 (as amended) recites attributes of the batting (the "batting consists of cotton or polyester or cotton-polyester") and now also recites as additional limitations attributes of the adhesive material ("the adhesive material facilitates a bond at the opposing faces of the batting by application of heat"), reflecting the suggestions provided by the Supervisory Examiner. Claim 67 (as amended) requires a "composite member" of the batting and the adhesive material be "formed" and that the adhesive material is "for bonding fabrics" and

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"facilitates a bond at the opposing faces of the batting by application of heat." The specific manner in which the "composite member" is "formed" or the "adhesive material" is "applied" is not intended to be claimed (i.e. Claim 67 is directed to a product and not to a method). However, the "composite member" (of the batting and the adhesive material) is formed so that the adhesive material facilitates a bond by application of heat to secure the cover to the batting at opposing faces.

The Applicants have rewritten independent Claim 86 based on Independent Claim 21 (as amended) to recite a "composite member formed of the batting and an adhesive material applied to the batting" (explaining how the adhesive material is provided with the batting) so that a "cover can be attached to the batting by an adhesive connection at the opposing faces of the batting" (explaining where the adhesive material is provided with the batting). Claim 86 (as amended) recites attributes of the batting (the "batting consists of cotton or polyester or cotton-polyester") and now also recites as additional limitations attributes of the adhesive material (the "adhesive material comprises a soluble material effective to at least temporarily secure the cover to the batting"), reflecting the suggestion provided by the Examiner. The Applicants do not intend to claim any particular manner of application of the adhesive material (i.e. Claim 86 is directed to a product and not to a method). However, the adhesive material applied to the batting must form a "composite member" so that an "adhesive connection" can be made to a cover. In other words, the "composite member" has the adhesive material applied in a manner that the adhesive material is present at the opposing faces (i.e. surfaces) of the batting.

The pending claims now particularly point out and distinctly define the metes and bounds of the subject matter that the Applicants intend to protect. See M.P.E.P. § 2171 and 35 U.S.C. § 112 ¶ 2. The relationship of the batting and the adhesive in forming a "composite member" is now particularly pointed out and distinctly defined. The form of the amendment of Claims 21, 67 and 86 makes clear that the scope of Claims 21, 67 and 86 (as amended) are no broader than the scope of Claims 21 and 67 as examined and referenced in the final Office Action dated April 9, 2003.

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Dependent Claims 22-23, 26, 29, 31-32 and 34-36 have been amended to provide claims of varying scope and for conformance with independent Claim 21 (as amended). Dependent Claims 70-85 have been amended to provide claims of varying scope and for conformance with independent Claim 67 (as amended). Dependent Claims 87-88, 90-92 and 94-100 and 102 have been amended to provide claims of varying scope and for conformance with independent Claim 86 (as amended).

Claim 86

In Section 9, regarding independent Claim 86, the Examiner stated that "it is unclear to the Examiner the difference between 'loft' and batting"

Independent Claim 86 has been rewritten and no longer recites a "loft." Claim 86 (as amended) now recites a "batting."

Claim 84

In Section 10, regarding Claim 84, the Examiner stated that "the phrase 'such as' ... renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention." The Examiner suggested that the phrase be deleted.

The Applicants have amended dependent Claim 84 to delete the phrase "such as yarn or thread" as suggested by the Examiner.

Claim 102

In Section 11, regarding dependent Claim 102, the Examiner stated that "the term 'low-loft' is a relative term" and "is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree."

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The Applicants have amended dependent Claim 102 to remove the term "1 w-loft." Dependent Claim 102 (as amended) now recites that the cotton or polyester or cotton-polyester of the batting is "needle punched."²

Summary

The Applicants believe that independent Claims 21, 67 and 86 (as amended) and dependent Claims 84 and 102 (as amended) have overcome the rejections under 35 U.S.C. § 112 ¶ 2 and are in condition for allowance.

Claim Rejections - 35 U.S.C. § 112 ¶ 1

In Sections 12-13 of the Office Action, the Examiner rejected Claims 86-102 under 35 U.S.C. § 112 ¶ 1. The Examiner stated "the specification does not teach a batting comprising a 'loft' as presently claimed ... [t]he specification merely teaches batting can be classified according to the amount of 'loft' present."

The Applicants have rewritten independent Claim 86. Claim 86 (as amended) now recites a "batting" and does not include the term "loft." Dependent Claims 92 and 98 have also been amended for conformity to Claim 86 (as amended).

The Applicants believe that independent Claim 86 (as amended) and dependent Claims 87-102 have overcome the rejections under 35 U.S.C. § 112 ¶ 1 and are in condition for allowance.³

Claim Rejections - 35 U.S.C. § 102

In Sections 14-15 of the Office Action, the Examiner rejected Claims 86, 89, 91-93, 95-96 and 98 as being anticipated by U.S. Patent No. 3,278,954 issued to Barhite

² Dependent Claim 87 has also been amended to recite that the cotton or polyester or cotton-polyester of the batting is "needle punched." Support for the amendment to dependent Claims 87 and 102 is found in the original Specification on page 5, line 18.

³ Dependent Claim 102 has been amended to depend from Independent Claim 21 (as amended).

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under 35 U.S.C. § 102(b). The Examiner stated "the Applicants use of the term 'comprising' does not preclude Barhite from being relied upon as a reference."

Independent Claim 86 has been rewritten based on independent Claim 21 (which is not under any rejection under 35 U.S.C. §§ 102 or 103) and to reflect the agreement reached by the Applicants and the Supervisory Examiner during the telephonic interview. Claim 86 (as amended) now recites that the "batting consists of cotton or polyester or cotton-polyester" (and not a "loft").

The Applicants believe that rewritten independent Claim 86 (as amended) and dependent Claims 89, 91-93, 95-96 and 98 have overcome the rejections under 35 U.S.C. § 102(b) and are in condition for allowance.

Allowable Subject Matter

In Section 16 of the Office Action the Examiner stated "Claims 21 and 67 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph." Independent Claims 21 and 67 are not under any rejection under 35 U.S.C. §§ 102 or 103. The Applicants have amended independent Claims 21 and 67 to address and overcome the rejections under 35 U.S.C. § 112 ¶ 2 based on the agreement reached between the Applicants and the Examiners during the telephonic interview and respectfully request allowance of independent Claims 21 and 67 (as amended).

In Section 17 of the Office Action the Examiner stated "Claims 84 and 85 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph." The Applicants have amended dependent Claims 84 and 85 as suggested by the Examiner to address the rejections under 35 U.S.C. § 112 ¶ 2 and respectfully request allowance of dependent Claims 84 and 85 (as amended).

In Section 18 of the Office Action the Examiner stated "Claims 22, 23, 26, 28, 29, 31, 32, 34-37, 39 and 68-83 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims." The Applicants have amended

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and placed base independent Claims 21 and 67 in condition for allowance and respectfully request allowance of dependent Claims 22, 23, 26, 28, 29, 31, 32, 34-37, 39 and 68-83.

* * *

The Applicants believe that each outstanding objection and rejection to the pending claims has been overcome, and the Application is in condition for allowance.

Independent Claims 21, 67, and 86 have been amended and dependent Claims 22-23, 26, 29, 31-32, 34-36, 67, 70-88, 90-92, 94-100 and 102 have been amended. Claims 21-23, 26, 28-29, 31-32, 34-37, 39 and 67-102 are pending and are each believed to be allowable. The Applicants request entry of this Amendment, and reconsideration and allowance of all pending Claims 21-23, 26, 28-29, 31-32, 34-37, 39 and 67-102.

The Examiner is invited to telephone the undersigned if such would advance the prosecution of the Application.

Respectfully submitted,

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